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**IN THE
COURT OF APPEALS OF INDIANA**



MATTER OF N.B.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0802-JV-92

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0710-JD-3078

OCTOBER 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION
SULLIVAN, Senior Judge

The Juvenile Court found N.B. to be a delinquent for having committed what

would be a Class C felony, Child Molesting, if committed by an adult. The dispositional order made N. B. a ward of the Department of Correction but suspended the commitment. N. B. was placed on probation with special conditions, including sex offender treatment.

A finding of delinquency under circumstances such as presented in this case, requires proof beyond a reasonable doubt that the touching was accompanied by the specific intent to arouse or satisfy sexual desires. J. H. v. State, 655 N.E.2d 624 (Ind. Ct. App. 1995), transfer denied. However, the specific intent element may be established by proof of the conduct and the natural consequences thereof, and may be inferred from circumstantial evidence. Id.

Here, G. M., age six, shared a bedroom with thirteen year old N.B. They slept in a bunk-bed arrangement. The two girls did not get along well and often argued and had confrontations, some of which were physical. According to G. M., on occasion NB. would yell at her, strike and kick her. G.M. stated that she would tell her mother and N.B.'s father and that N.B. "would get into trouble". (Tr. 32)

At the denial hearing, G. M. testified that on at least one occasion, when G. M. was lying on the bunk bed, N. B. "touched [G. M.'s] pee-pee" on the outside of G. M.'s clothing. She stated that the touching occurred with N.B. using "two fingers . . . moving around" (Tr. 22).

On September 21, 2007 G. M.'s mother, who also lived in the residence, questioned N.B. about allegations of improper touching of G. M. The allegations had apparently been made by G.M. to the mother of a friend during a "play-date". (Tr. 43). As a result, G. M.'s mother inquired of G.M. who said that N.B. had touched her in the pee-pee area".

When questioned by G.M.'s mother on September 21, 2007, N.B. wrote out her recollection of the events. Those recitations were admitted into evidence and were as follows:

I played with myself in front of [G.M.] on my bed.
A few months ago I touched [G.M.] in her
pee pee area. I knew better than to do that because
it's inappropriate. I did it more than one time. She
told me to stop but I still did it continually, knowing
it was wrong. I told her not to or else I would
get mad. She knows what will happen. I would start
to hit on her and you would be able to see bruises on her
body (back, arm, legs). Mom asked her what's wrong with
her and I knew she is scared of me. I touched her
not too long ago. I hit her more than one time
and I touched her more than one time so I didn't
feel bad at the time until [G.M.] told on me. I enjoyed
it while I was doing it. I didn't start to think about
it until I got told on. If mom didn't find out
out, I would have kept on doing it and not care
how [G.M.] feel about it and I do not think
that I should get punished for it because I
don't care for no one else's feelings except mine.

[N.B.] September 21, 2007

No one told me to write this. I wrote this
cause every one already know about it and I
felt it was the right thing to do.

September
21, 2007

A few months ago I started to touch [G.M.] where her pee pee area is. She asked me to stop but I didn't but before she said don't touch me where I pee at, usually when she says something like that she says it in a voice like she is playing with me. I started to touch her down there cause I thought when she said that she was just kidding around like she usually does the first time when I did that she laughed but the other few times she didn't laugh that much. I didn't think she would like it, I did it because most of the time it helped keep her legs closed for a while we could laugh.

A while ago I've been hitting [G.M.] a lot of times on her back a lot on on her leg and arm it was a lot of times when you could see bruises on her back, arms, legs

N. B.'s fifteen year old sister M. B., also lived in the same house and was present there when G. M.'s mother "made [N. B.] write the letter. She was telling [N.B.] to put down details and stuff, not to forget about this and that." (Tr. 51) G. M.'s mother said that if N. B. "wasn't gonna write the letter, she was either gonna call [The Child Protection Service] or the police . . ." (Tr. 52)

G. M.'s mother denied that she intimidated N.B. into writing out the statements and that she told N. B. that N.B. could "write it down for me what you, everything you did to my baby? If you feel like it. And she was like, 'Yeah'" I said ". . .you don't have to if you don't want to but . . . that's the least you can do for me." (Tr. 45)

N.B. testified and denied that she had inappropriately touched G. M but that she wrote what was in the statements of September 21 because G.M.'s mother threatened her with calling the police. She did say that G.M lay on the bed with her legs "wide open" (Tr. 74) and that in order to make G. M. keep her legs closed that N.B. "chopp[ed] her between the legs." Id.

We are compelled to view the evidence in a manner most favorable to the judgment being appealed. A different trier of fact may have reasonably concluded that the touching by N.B. was not shown to have been done with a sexual intent and that as in J.H. v. State, supra, N. B.'s conduct although "certainly mean", and might constitute battery as a Class B misdemeanor under I. C. 35-42-2-1, "it alone is insufficient to amount to child molesting". 655 N.E.2d at 626.

Nevertheless, we cannot say that the true finding made here was wholly without reasonable justification. Accordingly, we affirm the judgment of the trial court and the disposition order entered.

Judgment affirmed.

BAILEY, J., and VAIDIK, J., concur.